

3rd Draft Comments

A. City of Santa Barbara

1. Summary of Comment:

The Receiving Water Limitations (RWL) contained in the draft General Permit are inappropriate. The City of Santa Barbara's objective is to eventually meet water quality standards, but in the interim, the reporting requirements are overly burdensome. Attachment 4 of the permit requires Permittees to report exceedances of water quality objectives within 30 days and then modify the Storm Water Management Program (SWMP) to avoid further violations. The City of Santa Barbara recommends that the standards be a goal and the permit encourage local monitoring, the results of which would be submitted to the Regional Water Quality Control Board (RWQCB) in annual reports.

Response to Comment:

The State Water Resources Control Board (SWRCB) has considered similar arguments about the RWL language several times before. The General Permit language uses the language from precedential WQ Order 99-05, which is found in numerous permits for Phase 1 municipal separate storm sewer system (MS4) permits. The voluntary program proposed by the City would not ensure ultimate compliance with water quality standards.

The procedure for complying with the RWL is not overly burdensome. The draft permit has been revised to clarify that Small MS4s are not required to comply with the RWLs until the SWMP is fully implemented. (The permit requires full implementation of SWMPs by the end of the permit term or, for Small MS4s designated subsequent to permit adoption, over a five-year period from designation.) The RWLs also allow for an iterative process to achieve compliance over time. To ensure there is not duplicative reporting where an MS4 is complying with the iterative process for a pollutant, the language specifies that "the Permittees do not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Regional Water Board." This clause clarifies that continuous reporting is not required for problems that have been identified and for which programs are in place or are being developed.

2. Summary of Comment:

The use of "significant impacts" is unclear in section B.2.c of Attachment 4. The term seems to be used inconsistently in this section and may also be confused with its application to "environmental review."

Response to Comment:

Although one use of "significant impact" is in reference to a pollutant's negative impact on water quality and the other use is the BMP's positive impact on water quality, the term remains consistent in that it refers to changes of water quality as a result of a substance, activity, or practice. The term "significant impact" is widely used in environmental regulations and should not lead to confusion.

Additionally, we have used language that is substantially similar to the language in the RWQCB Order upheld by SWRCB Order WQ 2000-11¹.

3. Summary of Comment:

The requirement to “vegetate slopes with native or drought tolerant vegetation” in section B.2.d of Attachment 4 may prohibit the use of recycled water that is high in sodium chloride because many such plants are not tolerant of sodium chloride. The section should be revised so that recycled water may be used, where available.

Response to Comment:

In response to the comment, section B.2.d of Attachment 4 of the General Permit was changed to read “[V]egetate slopes with native or drought tolerant vegetation, as appropriate.”

4. Summary of Comment:

Section B.2.h of Attachment 4 should be revised to specifically allow “conditions of approval,” which is the process in which the City of Santa Barbara provides proof of maintenance.

Response to Comment:

Language of section B.2.h of Attachment 4 was not revised in order to remain consistent with Order WQ 2000-11, and because it was not necessary in order to accommodate the use of “conditions of approval.” The General Permit states that Permittees shall require the applicant/developer to utilize verifiable and enforceable mechanisms to ensure long-term maintenance. The General Permit gives examples of what may be used but also does not prohibit the use of other effective methods. As long as they satisfy the General Permit’s criteria, “conditions of approval” or any other effective methods may be employed.

B. City of Buellton

1. Summary of Comment:

Permitting controls for point sources must be in the form of effluent limitations. While the State and USEPA may believe that certain land use, education and other activities may reduce storm water discharges, it is the responsibility of the regulatory agencies to articulate the expected reductions as measurable numeric effluent limitations which can be monitored and enforced in application to every point source discharge. The draft General Permit violates the Clean Water Act (CWA) because it does not specify numeric effluent limits and it tries to specify the method of compliance.

¹ December 26, 2000 memorandum from Craig M. Wilson, SWRCB Chief Counsel, to RWQCB Executive Officer states that Order WQ 2000-11 is precedential and should be incorporated into permits consistently.

Response to Comment:

The General Permit as drafted is consistent with federal law. Specifically, 40 CFR section 122.44(k)(2) states that inclusion of *Best Management Practices* (BMPs) in lieu of numeric effluent limitations is appropriate in storm water permits. Moreover, Clean Water Act section 402(p) specifically requires that storm water permits “shall require controls..., including management practices, control techniques and system, design and engineering methods....”

C. Los Angeles Unified School District**1. Summary of Comment:**

There are many projects, such as playground resurfacing projects, which are not subject to the Division of the State Architect’s process of approval and should also not be subject to redesign to incorporate post-construction BMPs. The draft General Permit should be revised to allow the exemption of redesign for these projects.

Response to Comment:

The permit includes an exemption to allow construction projects already in the Proposition 47 “pipeline” to proceed without losing its place in line for funding. The scenario proposed by the commenter does not involve Proposition 47 funding and therefore does not fall within the scope of the exemption. The existing exemption specifies whether projects that have already been designed must be redesigned. This comment would create a total exemption for certain types of projects, which would be inconsistent with the federal regulations. In any event, no school districts are currently being designated to apply for permit coverage.

2. Summary of Comment:

School districts should be exempt from Standard Urban Stormwater Mitigation Plan (SUSMP) Requirements. Schools should not be evaluated according to their growth patterns because they are unlike growth patterns of traditional municipalities, the entities to which the requirements were intended to apply, and the costs of incorporating post-construction BMPs would be prohibitively expensive with little storm water quality benefit. Additionally SUSMP requirements are not necessary, because the District already addresses storm water concerns in all of its projects.

Response to Comment:

It is assumed that the growth patterns of a school district would reflect the growth patterns of the surrounding community. The commentor’s claim that school growth is not reflective of community growth is not supportable. Requiring SUSMPs for such school districts will create more consistency throughout a region. In any event, no school districts are currently being designated to apply for permit coverage.

D. Best Best & Krieger LLP on behalf of nearly 70 public entities

1. Summary of Comment:

The allowance of 365 days after notification for non-traditional Small MS4s to submit an application is supported.

Response to Comment:

Comment noted. Note that at this time, non-traditional Small MS4s are not being designated.

2. Summary of Comment:

The draft General Permit is not consistent in whether Small MS4s must be “owned and operated” or “owned or operated” by a governmental entity. The language in the permit should be modified to be consistent throughout using “owned and operated.”

Response to Comment:

The General Permit’s definition of Small MS4 has not been changed. It uses the “owned or operated” language provided in 40 CFR section 122.26(b)(16).

3. Summary of Comment:

The language specifying a time frame for those projects that are not required to be redesigned should be modified to be the following: “school facilities that have been submitted to the Department of General Services, Division of the State Architect *after* adoption of the Small MS4 Permit, and which receive final approval from the *State Allocations Board* by December 31, 2004, will not have to be redesigned to comply with the Small MS4 Permit.”

Response to Comment:

The General Permit has not been changed. The intent of this language is to provide an exemption from having to redesign a school project that is now awaiting funding. The language is intended to recognize the unique funding circumstances that exist for schools, and still provide the regulatory bodies with some assurances that over time, post construction storm water runoff control measures would be considered. The requested language would actually narrow the window as to who could qualify for the exemption, by requiring that plans would have to be submitted after the date of permit adoption, and would not exempt districts that submitted designs prior to permit adoption. For these reasons, the language was not changed.

4. Summary of Comment:

A similar exemption from redesigning approved construction projects should be made for community colleges: “community college projects submitted to the Board of Governors after adoption of the Small MS4 Permit and which receive Board of Governors approval by December 31, 2004, will not have to be redesigned to comply with the Small MS4 Permit.”

Response to Comment:

An allowance was provided for K-12 schools because it could significantly hinder school construction due to the construction and funding process required. The Board did not receive evidence of the need for a similar exemption for community colleges. The exemption was not expanded. In any event, no non-traditional MS4s are currently being designated to apply for permit coverage.

5. Summary of Comment:

Section E of the draft General Permit and correspondingly Attachment 4 should be clarified to clearly state whether the 50,000 figure applies to student population or to the size of the town or jurisdiction in which the students are located.

Response to Comment:

The 50,000 figure applies to the population that the MS4 serves. In the case of a school district, this would be the student and staff population of the school district. The General Permit has been modified to clarify this point.

6. Summary of Comment:

School districts and community colleges should be exempted from the requirements contained in Attachment 4. The thresholds could be applied inappropriately. For example, a small school could increase from 27 to 36, therefore meeting the “fast-growth” threshold; however, it would not be appropriate for such a school to be subject to the requirements in Attachment 4. Additionally, the requirement to capture and treat or infiltrate runoff from an 85th percentile storm event would, as written, apply to such things as resurfacing playgrounds that are one acre in size or more, leading to an extraordinary amount of unnecessary effort and expense. This is especially unnecessary because schools and community colleges will have adopted good housekeeping measures and other control measures to eliminate playground runoff.

Response to Comment:

Attachment 4 contains requirements for certain entities to comply with in order to protect water quality. Applying the criteria to both traditional and non-traditional Small MS4s creates consistency in a region. Furthermore, growth patterns of a school often reflect the growth patterns of the surrounding community so the surrounding community would also be subject to the requirements of Attachment 4. Additionally, the commentor’s example school district would not likely be subject to Attachment 4 requirements because very small school districts are typically located outside of permitted MS4 jurisdictions. Finally, Attachment 4 does not apply to routine maintenance projects, such as the resurfacing of playgrounds.

7. Summary of Comment:

The draft General Permit should be modified to clarify when notification of designation will occur.

Response to Comment:

The draft General Permit was modified to specify that the permit itself serves as notice for designated cities and counties. Written notices will also be sent subsequent to adoption of the General Permit, but the designation occurs at the time the permit is adopted for those designated in the permit. Additional designations of traditional and non-traditional Small MS4s may be made subsequent to permit adoption through written notices. The designated discharger will have 180 days after notification to submit an application, or a longer period if stated in the designation letter.

E. University of California:**1. Summary of Comment**

The UCSF campus should not be designated as a regulated Small MS4 because its MS4 discharges entirely to the city and county of San Francisco's combined sewer system.

Response to Comment:

The UCSF campus was removed from Attachment 3 because it discharges to a combined storm and sanitary sewer system, and therefore does not meet the definition of a regulated Small MS4.

2. Summary of Comment:

The exemption given to schools for redesign of "approved" projects should be expanded to give all non-traditional Small MS4s an exemption for projects that have received approval from the applicable authorities by December 31, 2004.

Response to Comment:

See response to comment C.1 regarding exemptions for projects already in the Proposition 47 "pipeline."

3. Summary of Comment:

Attachment 4 should be revised to be more applicable to non-traditional Small MS4s in both language and concept. For example, the use of the terms, ordinances, local codes, General Plans, and Local Area Plan policies do not apply to non-traditional Small MS4s. Additionally, the requirements should be applied in a more holistic manner (e.g., controlling the runoff from an entire non-traditional MS4, instead of the runoff from individual projects or buildings).

Response to Comment:

The language in Attachment 4 was changed to be consistent with the General Permit, which allows Permittees to utilize “other regulatory mechanisms.” Additionally, the requirements do allow for flexible implementation based on site conditions.

4. Summary of Comment:

The requirements in Attachment 4 regarding loading docks should be modified. It is not always practical to cover loading docks and the prohibition against direct connections to storm drains from depressed loading docks is unclear.

Response to Comment:

The requirements for loading docks recognize that it is not always practical to cover loading docks. For this reason, compliance may also be achieved by designing drainage “to minimize run-on and runoff of storm water.” For depressed loading docks, shut off valves, drain plugs, and intervening appurtenances are all good examples of BMPs that could satisfy this requirement. These kinds of appurtenances are mostly to keep spills out of the MS4, which is the intent of this requirement, given the discussion of spills associated with this requirement.

5. Summary of Comment:

The repair/maintenance bay requirements in Attachment 4 should be modified to “minimizes storm water run on or contact” instead of “doesn’t allow....”

Response to Comment:

The requirements regarding repair/maintenance bays were not changed. Given that these BMPs should be incorporated during the design phase of the project, there should be no leeway given to allow storm water run on or runoff contact with the area intended to continually accommodate vehicle maintenance.

6. Summary of Comment:

It is unclear whether the retail gasoline outlet (RGO) requirements of Attachment 4 apply to non-traditional Small MS4s because in general, the fueling facilities are not “retail.”

Response to Comment:

The requirements of this section only apply to RGOs, so if a facility is not a retailer, then these requirements do not apply. However, the types of activities performed by the municipality should be considered under the Good Housekeeping for Municipal Operations Minimum Control Measure so the same BMPs could be used.

7. Summary of Comment:

It is unclear whether the RGO requirements of Attachment 4 apply to Compressed Natural Gas (CNG) and Liquid Propane Gas (LPG) fueling facilities. These facilities should be exempted from the requirements or the Permittee should be given the flexibility to choose appropriate BMPs.

Response to Comment:

The RGO requirements would apply to CNG and LPG fueling facilities if they are retail facilities. Regardless, the types of activities performed by the municipality should be considered under the Good Housekeeping for Municipal Operations Minimum Control Measure.

8. Summary of Comment:

The requirements for RGOs in Attachment 4 are inconsistent with the requirements for automotive repair shops in Attachment 4.

Response to Comment:

The RGO requirements and the automotive repair shop requirements were modified for consistency.

9. Summary of Comment:

The 2-4 percent sloping requirement in the RGO section of Attachment 4 is higher than necessary to prevent ponding.

Response to Comment:

The sloping requirement was not changed. The slope requirement is consistent with guidance developed by the California Stormwater Quality Association (formerly the California Stormwater Quality Task Force), which was done so with input from industry.

10. Summary of Comment:

The threshold size of parking lots requiring infiltration or treatment should be raised because, as written, the cost associated with the required BMPs is excessive compared to the pollutant loading resulting from typical small parking lots. Alternatively, the threshold could also be dependent on frequency of use, so smaller parking lots with high-use would still be required to have treatment BMPs while small, low-use parking lots would not.

Response to Comment:

Because of the potential for a significant impact on receiving waters, several Phase I MS4 permits throughout the state require SUSMP type controls for parking lots sized 5,000 square feet or larger. The State Board approved this threshold in precedential Order No. 2000-11. There are many options for the incorporation of BMPs, some of which are low or moderate in cost. There is also a waiver provision available when “impracticability” is shown.

11. Summary of Comment:

The requirement for runoff from parking lots should be to infiltrate *or* treat, instead of infiltrate *and* treat.

Response to Comment:

The requirement was modified to indicate that runoff must be infiltrated “or” treated.

12. Summary of Comment:

The requirement for runoff from parking lots should be to infiltrate or treat runoff before it *leaves the site*, rather than before it *reaches the storm drain system*.

Response to Comment:

The language was not changed. An individual drain is not an MS4. Discharges may be collected and conveyed through an individual drain prior to treatment; however, they must be treated or infiltrated prior to being discharged to an MS4 or a waters of the U.S.

13. Summary of Comment:

The waiver provision contained in Attachment 4 should be modified to better accommodate the procedures of non-traditional Small MS4s. In general, these entities do not use ordinances or codes, but use policies or procedures.

Response to Comment:

Please see response to comment E.3.

F. Department of the Navy

1. Summary of Comment:

La Posta Training Center, SERE Training School, and Naval Auxiliary Landing Field, San Clemente Island should not be designated as regulated Small MS4s and should be removed from Attachment 3 because they are not within urbanized areas.

Response to Comment:

At this time, non-traditional Small MS4s are not designated. However, because La Posta Training Center and SERE Training School are not within otherwise permitted areas and they have not yet been identified as significant contributors of pollutants, they have been removed from Attachment 3. The Naval Auxiliary Landing Field remains on Attachment 3 because of its proximity to a sensitive water body.

G. Sonoma County Water Agency

1. Summary of Comment:

It is unclear whether Attachment 4 applies to the Sonoma County Water Agency because the Agency operates flood control channels that run through areas with populations of more than 50,000 people.

Response to Comment:

Attachment 4 applies to Sonoma County Water Agency because it serves a population of more than 50,000.

2. Summary of Comment:

The factors listed in California Water Code (CWC) section 13241 should be considered before setting receiving water limitations because RWQCBs may not have thoroughly considered them in light of discharges from MS4s. For example, temperature requirements may be impossible to meet because of the nature of rainfall.

Response to Comment:

The General Permit implements receiving water limitations based on water quality objectives established in Regional Water Quality Control Plans and water quality criteria promulgated by the U.S. Environmental Protection Agency. RWQCBs considered CWC section 13241 when establishing water quality objectives. The factors in CWC section 13241 do not apply in establishing receiving water limitations to implement those objectives and criteria.

3. Summary of Comment:

The iterative process required if there are exceedances of receiving water limitations may become overly burdensome in light of the revisions to the definition of MEP contained in the Fact Sheet of the draft General Permit. The Water Agency states that “if a permittee has employed BMPs to address a pollutant to the MEP and can substantiate why some BMPs were eliminated, the Permittee should not be required to add more BMPs to its SWMP in order to be in compliance with the General Permit.” Additionally, the Water Agency supports ‘safe harbor’ language in the General Permit where a permittee is in compliance with the permit if it is implementing BMPs to the MEP.”

Response to Comment:

The language in the General Permit was modified to be consistent with the language approved in precedential WQ Order 99-05, which does not include ‘safe harbor’ language. The General Permit does recognize that meeting receiving water limitations and implementing the iterative approach does take time. If water quality standards are exceeded, however, the MS4 must implement more or different BMPs. While it is true that Permittees may be able to justify eliminating some BMPs, they must then substitute other BMPs that are effective. Also, a Permittee must continue to work toward compliance with water quality standards. Language was added to the Fact Sheet clarifying this point. The State Board is not accepting the “safe

harbor” language proposed by the Agency because it would mean that MS4s do not have to undertake further BMPs than the minimum MEP standard even if water quality standards are not being met.

4. Summary of Comment:

The General Permit should describe a process in which the Permittee and RWQCB Executive Officer (EO) can establish acceptable revisions to the SWMP (upon submittal, annual evaluations, and in the case of receiving water exceedances) without being in violation of the General Permit and the CWA. As written, the Water Agency feels that if the RWQCB EO requires SWMP modifications, it would be without the proper public process.

Response to Comment:

It is expected that the Permittees and RWQCB staff will work together in developing acceptable requirements and programs, as has been the practice in the past. But it is the role of the as the permitting authority ultimately to decide whether the SWMP is adequate. Additionally, the General Permit was changed to allow for public hearings, upon request, for proposed NOIs and/or SWMPs.

H. San Diego Regional Water Quality Control Board

1. Summary of Comment:

The use of a population size or growth threshold to trigger compliance with receiving water limitations is inappropriate. Compliance with water quality standards is more directly tied to the quality of storm water management programs being implemented. Entities with good SWMPs will most likely protect receiving water quality, while those with poor programs will not. Receiving Water Limitations should be applicable to all Permittees covered by the General Permit.

Response to Comment:

It is recognized that there is a direct connection between urbanization and receiving water quality. Larger communities are generally more urbanized and fast-growing communities are quickly becoming more urbanized, thus, there is a relationship between population characteristics and threat to water quality. As this is the first permit cycle for Phase II Permittees that have limited resources and experience, it is appropriate for smaller entities that are not fast-growing to receive a permit that allows an entire permit term to implement BMPs that reflect MEP.

2. Summary of Comment:

The “safe harbor” language should be removed from the RWL. The language does not necessarily encourage a permittee’s best efforts because it prevents further enforcement action if a plan is submitted, despite whether the plan is appropriate or effective. Additionally, it is inconsistent with other SWRCB orders without justification.

Response to Comment:

The language has been removed.

3. Summary of Comment:

If it is the intent that all Permittees will be required to comply with RWL during the next permit cycle, as described in the letter accompanying the third draft of the General Permit (January 8, 2003 version), such a finding should be included in the General Permit.

Response to Comment:

It has not been determined that all entities subject to the Small MS4 permit will be subject to RWL during the next permit cycle. Therefore, including a finding to that effect is not appropriate.